

# **EXHIBIT B – PART 1**

UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE

COPY

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In re: ) Chapter 11  
INACOM CORP., et al., )  
Debtors. ) Case No. 00-2426 (PJW)  
Jointly Administered  
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INACOM CORP., )  
On behalf of all affiliated ) Civil Action No.  
Debtors, ) 04-582 (GMS)  
Plaintiffs, )  
V. ) Adv. Pro. No.  
DELL COMPUTER CORPORATION, ) 02-03499 (PJW)  
Et al., )  
Defendants. )  
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ORAL DEPOSITION OF

STEPHEN H. THOMAS

JULY 13, 2005

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ORAL DEPOSITION of STEPHEN H. THOMAS, produced as a witness at the instance of the Plaintiffs, and duly sworn, was taken in the above-styled and numbered cause on the 13th day of July, 2005, from 9:33 a.m. to 4:29 p.m., before David Bateman, RPR, CSR in and for the State of Texas, reported by machine shorthand, at the offices of Hughes & Luce, LLP, 111 Congress Avenue, Suite 900, Austin, Texas 78701, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

A P P E A R A N C E S

FOR THE PLAINTIFFS:

MR. EARL M. FORTE  
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FOR THE DEFENDANT DELL COMPUTER CORPORATION:

MS. SABRINA STREUSAND  
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(512) 482-6842

ALSO PRESENT:

MR. MICHAEL L. NEWSOM (Via Telephone)  
Bridge Associates, LLC

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1 STEPHEN H. THOMAS,  
2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. FORTE:

5 Q Mr. Thomas, could you please state your full  
6 name and home address for the record.

7 A Stephen Harrison Thomas, 3325 Regent Drive,  
8 Dallas, Texas 75229.

9 Q Okay. Do you intend to reside there for the  
10 indefinite future, sir?

11 A Yes.

12 Q I assume you've given a deposition before.

13 A Correct.

14 Q All right. So you're familiar with the ground  
15 rules?

16 A Yes.

17 Q Well, let me just go through a few. As you  
18 know, there's a court reporter to your left taking down  
19 everything that's said. Please speak audibly and  
20 clearly.

21 And I'll promise to try not to interrupt  
22 you and hopefully you can do the same. If your counsel  
23 objects, please stop and let her complete her objection  
24 so the court reporter can get everything down because  
25 he can't get down two people speaking at once.

1 Do you understand that, sir?

2 A Yes.

3 Q All right. Is there any reason that you're  
4 aware of why you cannot proceed with your deposition  
5 today?

6 A No.

7 Q You're represented today by Sabrina Streusand?

8 A Correct.

9 Q Of Hughes & Luce?

10 A Yes.

11 Q And Hughes & Luce is preference counsel to  
12 Dell in this case; is that correct?

13 A Correct.

14 MS. STREUSAND: Mr. Forte, just to  
15 clarify that, we have retained Mr. Thomas as an expert  
16 witness.

17 MR. FORTE: I understand.

18 MS. STREUSAND: Okay.

19 Q (BY MR. FORTE) What's your current business  
20 address, sir?

21 A 400 North St. Paul, Suite 600, Dallas, Texas  
22 75201.

23 Q Is that your only business address?

24 A Yes.

25 Q Do you intend to keep your business address

1 there for the indefinite future?

2 A Yes.

3 Q Now starting with your undergraduate  
4 education, could you review your educational background  
5 for me, please.

6 A I have a bachelor of business administration  
7 degree with a specialization in accounting from  
8 Southern Methodist University in Dallas, Texas. I  
9 obtained that degree in 1974. I have no other degrees.

10 Q Okay. You said you majored in accounting?

11 A I have emphasis in accounting. At that time,  
12 SMU didn't have majors technically, although I had 36  
13 hours of accounting, nine of business law and nine of  
14 finance. I would easily be an accounting major in a  
15 school that had majors.

16 Q All right. So your undergraduate degree is in  
17 business with an emphasis in accounting, correct?

18 A Yes.

19 Q All right. Was that a full-time, four-year  
20 undergraduate program?

21 A Yes.

22 Q Now you said you have no other degrees; is  
23 that right?

24 A Yes.

25 Q Do you have any other form of non-degreed

1 education?

2 A As an -- as a CPA, I'm required to take at  
3 least 40 hours of continuing professional education  
4 each year. And I've maintained my CPA certificate  
5 since obtaining it in 1979.

6 Also as a certified fraud examiner, I  
7 have to have either 10 or 20 hours a year in  
8 fraud-related topics. The two can be concurrent, and I  
9 usually do training that satisfies both needs.

10 So I usually get around 40 hours a year  
11 of continuing professional education.

12 Q And you've been doing that since 1979?

13 A Yes.

14 Q And how did you get your certified public  
15 accountancy license?

16 A It's in Texas and I got it the standard way.  
17 I took the test, paid the money and got the -- I think  
18 at that time two years of experience under the  
19 supervision of other licensed CPAs.

20 Q And what kind of experience was that?

21 A I was an auditor for the accounting firm of  
22 Arthur Andersen & Company in Dallas, Texas.

23 Q That was the auditing of public companies?

24 A Some were public. Some were private.

25 Q Did you ever certify a publicly-filed



1 financial statement?

2 A No. I was not a partner at Arthur Andersen.  
3 Thus I did not sign any audit opinions.

4 Q And I assume that the two years you worked for  
5 Arthur Andersen was before you were a CPA.

6 A That's correct. I worked for Arthur Andersen  
7 more than two years. But it was a required two-year  
8 minimum in order to obtain your certificate.

9 Q And how long did you work for Arthur Andersen,  
10 sir?

11 A Approximately four years.

12 Q In what time period?

13 A '74 to '78.

14 Q And again, that was before you were a CPA?

15 A Correct.

16 Q Did you ever work for Arthur Andersen after  
17 you became a CPA?

18 A Yes.

19 Q And when was that?

20 A I became a CPA in early 1979 and I didn't  
21 leave Arthur Andersen until mid-1979. So there was a  
22 short period of time I was a CPA working for Arthur  
23 Andersen.

24 Q Could you describe what kind of work you did  
25 during that short period in 1979?

1           A       The same kind of work as before, I was an  
2 auditor.

3           Q       And that was a mixture of public and private  
4 companies?

5           A       Correct.

6           Q       And I assume the reason you didn't certify any  
7 financial statements for a public company during the  
8 time you were at Arthur Andersen because it was company  
9 policy to have that done by partners; is that correct?

10          A       The partners only signed the opinions.

11          Q       And you were just an employee?

12          A       Correct.

13          Q       All right. What occasioned your departure  
14 from Arthur Andersen in mid-1979?

15          A       I was an oil and gas auditor primarily. This  
16 was during the oil and gas boom. So I left for more  
17 money, less hours, bigger staff, better title. It's a  
18 natural transition from public accounting.

19          Q       Okay. So during the time you were at Arthur  
20 Andersen, most of your auditing work was for oil and  
21 gas clients?

22          A       Correct.

23          Q       Could you describe several examples of the  
24 types of clients you audited for me, please?

25          A       Yes.

1 Q Could you do that?

2 A Yes.

3 Q Please do.

4 A Okay. Primarily, they were public fund  
5 companies. They were oil and gas. Let me back up.

6 On-shore oil and gas exploration,  
7 domestic generally, often they did public drilling  
8 funds where they would form limited partnerships and  
9 sell limited partnership units to investors. Those  
10 were most of my clients.

11 Q Okay. So domestic exploration and production?

12 A Yes.

13 Q And limited partnership type structures?

14 A Yes.

15 Q All right. And by whom were you employed  
16 after you left Arthur Andersen -- excuse me -- in  
17 mid-1979?

18 A Energy Sources, Inc.

19 Q What kind of a company was that?

20 A The same kind. They did public drilling  
21 funds, although we did have some offshore concessions,  
22 which was one differentiation. However, my primary  
23 focus was on the domestic on-shore oil and gas  
24 production limited partnerships.

25 Q So Energy Sources, Inc. was a limited

1 partnership?

2 A No. Energy Sources, Inc. was a corporation.  
3 They would serve as the general partner in each of the  
4 limited partnerships they formed and sold and did  
5 partnership units in.

6 Q Approximately how many limited partnerships  
7 did Energy Sources, Inc. act as the general partner of?

8 A This is rough, but I would say 20 to 25.

9 Q Was that investment in domestic oil fields?

10 A Yes, or undeveloped leases we hoped to make  
11 into an oil field.

12 Q Did you succeed?

13 A Occasionally.

14 Q How long was Energy Sources, Inc. and the  
15 limited partnerships it was the GP of operate?

16 A Could you --

17 Q How long did -- that was a bad question.

18 A I'm sorry.

19 Q I'll re-ask the question. How long did Energy  
20 Sources, Inc. operate?

21 A I don't know when they were founded or when  
22 they started since I came on board in 1979 and they  
23 were preexisting.

24 Q Does it still exist today?

25 A No.

1 Q Did it go bankrupt?

2 A Yes.

3 Q What was your position at Energy Sources,  
4 Inc.?

5 A My initial position was manager of partnership  
6 accounting. I was then promoted to controller.

7 Q And what were your duties as manager of  
8 partnership accounting?

9 A I basically oversaw and managed the accounting  
10 for all the limited partnerships.

11 Q Did that involve the calculation of tax  
12 deductions for limited partner investors?

13 A No.

14 Q Did you render any kind of tax opinions with  
15 respect to your work at Energy Sources, Inc.?

16 A No.

17 Q Did the company go bankrupt while you were  
18 employed there?

19 A Yes.

20 Q Were you an owner of Energy Sources, Inc.?

21 A I had stock options, which were eventually  
22 worthless.

23 Q Was Energy Sources, Inc. put through a  
24 bankruptcy proceeding?

25 A Yes.

1 Q What federal district?

2 A The Northern District of Texas, Dallas  
3 Division.

4 Q When was that?

5 A I think in 1982.

6 Q Do you recall whether it was a Chapter 11 or a  
7 Chapter 7?

8 A It started off as 11 and went to 7.

9 Q As they often do. Did you give any testimony  
10 during the bankruptcy proceeding?

11 A No.

12 Q Were you sued in connection with that  
13 bankruptcy?

14 A Me personally?

15 Q Yes.

16 A No.

17 Q Was there a lawsuit against the directors and  
18 officers of Energy Sources, Inc.?

19 A I don't recall.

20 Q Were there any investigations by the Internal  
21 Revenue Service?

22 A I don't recall. I don't think so.

23 Q You don't happen to recall the case number for  
24 the bankruptcy of Energy Sources, Inc.?

25 A No, sir. I apologize for that outburst. I --

1 my memory's not nearly that good.

2 Q No, I -- I understand. But sometimes people  
3 live things and they remember surprising details and  
4 can't remember what they had for breakfast the same  
5 day. It's just the way it is. So I had to ask you.

6 A I'm sorry. No, I -- I do not recall the case  
7 number.

8 Q All right. And that proceeding was filed in  
9 1982 you said; is that correct?

10 A That's to the best of my recollection. I  
11 could be off a year either way.

12 Q Do you remember how long it was pending?

13 A No.

14 Q Do you recall who the judge was?

15 A No.

16 Q When did you leave the employment of Energy  
17 Sources, Inc.?

18 A Possibly late '83, early '84. I don't recall  
19 with much specificity.

20 Q So you remained an employee of Energy Sources,  
21 Inc. after its bankruptcy filing?

22 A For around a year, possibly a little more.

23 Q What was your -- what were your job duties  
24 during that year?

25 A Well, they continually increased as the staff

1 shrank until I was one of the final handful of people  
2 there and finally, obviously in a Chapter 7, everyone  
3 goes away.

4 Q What were you doing? Why were you still  
5 there?

6 A Accounting -- accounting and various  
7 administrative functions.

8 Q Like what?

9 A Gathering various information for the  
10 attorneys, helping figure out how to shut down offices,  
11 basically trying to close down the business.

12 Q Do you recall if -- well, let me back up a  
13 minute. Were you an officer of Energy Sources, Inc.?

14 A No.

15 Q Just an employee?

16 A Yes.

17 Q All right. Do you recall whether the Internal  
18 Revenue Service or other taxing authorities sought to  
19 recover from you personally unpaid trust fund taxes or  
20 things of that nature?

21 A They didn't try to recover anything from me  
22 personally.

23 Q And that's the Internal Revenue Service or the  
24 local taxing authorities in the state of Texas?

25 A Correct.



1 Q Were you involved in preference litigation --

2 A No, I didn't --

3 Q -- at Energy Sources, Inc.?

4 A I'm sorry.

5 Q That's okay. Go ahead.

6 A Not at Energy Sources, Inc.

7 Q Did you assist the lawyers during the  
8 bankruptcy filing with litigation matters?

9 MS. STREUSAND: In Energy Sources, Inc.?  
10 Is that your question?

11 MR. FORTE: Yes.

12 A I may have, in that I often gathered data or  
13 information that they wanted. But at that time, I  
14 didn't know if that was because of the planned  
15 preparation, other bankruptcy requirements or  
16 litigation.

17 So I couldn't specifically say that it  
18 was for litigation. I just helped the attorneys  
19 gathering information that they asked for.

20 Q (BY MR. FORTE) Do you recall whether there was  
21 any recovery for the limited partner investors in  
22 Energy -- in the Energy Sources, Inc. bankruptcy  
23 proceeding?

24 A No.

25 Q You just don't recall or there wasn't any?

1           A       I left before the bankruptcies were finalized,  
2   so I don't know.

3           Q       All right. When you left Energy Sources, Inc.  
4   in late '83 and early '84, what was your next place of  
5   employment?

6           A       For the next several months, I worked as an  
7   independent contractor because it was audit and tax  
8   time. And as an accountant, I was able to find hourly  
9   employment in that manner.

10          Q       All right. So what kind of hourly employment?

11          A       I assisted various companies prepare audit and  
12   tax work papers.

13          Q       What kind of companies?

14          A       Generally, oil and gas companies since that  
15   was my area of expertise. There may have been other  
16   companies. I don't recall.

17          Q       Did you work as an employee or independent  
18   contractor at that time?

19          A       As an independent contractor.

20          Q       Now prior to the time you left Energy Sources,  
21   Inc. and began this auditing and tax work as you've  
22   described, did you have prior experience in the audit  
23   and tax area?

24          A       None in tax. My work at Arthur Andersen, as  
25   I've explained, was as an auditor. So I did have

1 experience there.

2 Q I just want to clarify. So beginning in  
3 approximately late '83 or early '84, you left Energy  
4 Sources, Inc. and acted as an independent contractor  
5 for certain oil and gas concerns doing audit and tax  
6 work. Is that a fair summary?

7 A Preparing audit and tax work papers to be used  
8 by others in the audit or tax return. I was helping  
9 just prepare the data.

10 Q All right.

11 A I did not do any tax returns. I didn't do any  
12 actual audit opinions. I was just doing the ground  
13 work, the preparatory work.

14 Q And how long did you do this independent  
15 contracting work?

16 A Six months to a year.

17 Q So approximately until early 1985; is that  
18 fair?

19 A Yes.

20 Q All right. Did you eventually find full-time  
21 employment after that period?

22 MS. STREUSAND: Object to the form of the  
23 question.

24 A Eventually I did.

25 Q (BY MR. FORTE) And what did you find?

1           A     After being an independent contractor as I've  
2 explained, my next work was still as an independent  
3 contractor. However, it was no longer performing the  
4 same function.

5                     An associate of mine at Arthur Andersen &  
6 Company had also left Arthur Andersen & Company. And  
7 he began to work for a trustee in bankruptcy. He  
8 needed assistance at -- on one of his jobs.

9                     And he called me up and asked if I would  
10 help him on an hourly basis as I continued to seek  
11 full-time, permanent employment, which I was still  
12 trying to do at that time.

13                    And so as I continued to look for a real  
14 permanent job, I switched gears a little bit and began  
15 to work for a bankruptcy trustee on an hourly basis.  
16 And I did that for several years as I continued to look  
17 for a real permanent, part-time -- a real permanent,  
18 full-time job.

19           Q     All right. So you -- you continued doing  
20 independent contracting work for bankruptcy trustees;  
21 is that correct? I'm just trying --

22           A     Primarily one bankruptcy trustee.

23           Q     Okay. Who was that?

24           A     Walter Kellogg.

25           Q     K-E-L-L-O-G-G?

1 A Yes.

2 Q Did he work primarily in the Northern District  
3 of Texas?

4 A I don't know.

5 Q Now your former friend from Arthur Andersen,  
6 did he put you and Mr. Kellogg together? Is that a  
7 fair characterization?

8 A I worked with and through him. He was the  
9 lead accountant and I worked with him. Together, we  
10 worked for Mr. Kellogg.

11 Q All right. So your former friend from Arthur  
12 Andersen -- what was his name, by the way?

13 A John Litzler, L-I-T-Z-L-E-R.

14 Q So Mr. Litzler worked for Mr. Kellogg; is that  
15 correct?

16 A Indirectly. Often we would be hired by either  
17 the debtors or the state, as you know how bankruptcy  
18 works. But essentially we were working under the  
19 direction and for the benefit of Mr. Kellogg.

20 MS. STREUSAND: On behalf of the state.

21 THE WITNESS: Yes, or the secured  
22 creditor, whoever we might be working for.

23 Q (BY MR. FORTE) What kind of work would you do  
24 for Mr. Kellogg or the other types of clients that you  
25 worked for during this period?

1 A Accounting work.

2 Q And what was the accounting work used for?

3 A Various bankruptcy purposes.

4 Q Can you give me some examples?

5 A Often there would be questions posed in the  
6 bankruptcy proceedings or decisions to be made, should  
7 we go down this avenue or that avenue. The people that  
8 made the decisions would need information.

9 I was a functionary trying to gather  
10 information and possibly package it for presentation to  
11 higher-ups for whatever use they might be working on.

12 Q During that time, did you do any preference  
13 analysis?

14 A No.

15 Q How long did you perform this work with Mr.  
16 Litzler and Mr. Kellogg and the various other types of  
17 clients you've just described?

18 A Several years.

19 Q Okay. Well, I think we came up to  
20 approximately early 1985 when you began this phase; is  
21 that correct?

22 A Yes.

23 Q And you say "several years." Does that mean  
24 three?

25 A At least.

1 MS. STREUSAND: Answer only if you know.

2 Don't speculate.

3 A At least.

4 Q (BY MR. FORTE) At least three? Okay. Was it  
5 five?

6 A I don't know.

7 Q Well, if it was at least three, it's more than  
8 three. Correct?

9 A Without being evasive, if I could just  
10 explain. We went from being independent hourly  
11 contractors. We actually then formed a firm. And when  
12 that happened and how that transitioned, I don't recall  
13 when.

14 But I then worked with Litzler &  
15 Associates for many years. Exactly when that  
16 transpired, I don't recall. It was a slow, almost  
17 evolutionary process.

18 Q All right. Well, was it -- is it safe to say,  
19 based on your recollection, that it was sometime  
20 between 1985 and 1990?

21 A Yeah.

22 Q All right. What form of entity was Litzler &  
23 Associates?

24 A I don't know.

25 Q Were you an owner in Litzler & Associates?

1 A No.

2 Q Who owned it?

3 A I think John Litzler.

4 Q He was the one hundred percent owner?

5 A I don't know. I think so.

6 Q Is there any reason why you would doubt that  
7 Mr. Litzler was the one hundred percent owner?

8 A No.

9 MS. STREUSAND: Objection to the form of  
10 the question.

11 A No.

12 Q (BY MR. FORTE) All right. How long were you  
13 employed by Litzler & Associates?

14 A Again, there was -- if I can try to be clear  
15 to your answer, there was then a phase where I began to  
16 phase out of Litzler Associates and began to work as an  
17 hourly contractor for Lain Faulkner & Company, my  
18 current employer.

19 So there was a transition period of  
20 possibly a year, as I was wrapping up duties with  
21 Litzler & Associates, while doing hourly work as an  
22 employee for Lain Faulkner & Company.

23 And again, there's not a clean break  
24 there. But I think my official employment date at Lain  
25 Faulkner & Company may have been in 1989.



1 Q All right. I want to make sure I understand  
2 what you just described. Sometime around approximately  
3 1985 you began working for Litzler & Associates.

4 A Uh-huh.

5 Q And in approximately 1989 you began phasing  
6 over to work for Lain Faulkner as an hourly worker; is  
7 that correct?

8 A I -- the phase-in may have started prior to  
9 '89. But I think sometime in '89 is the official  
10 employment date where I became a full-time employee at  
11 Lain Faulkner.

12 Q A W-2 employee --

13 A Yes.

14 Q -- is my question.

15 A Yes.

16 Q All right. Could you describe the work -- the  
17 line of business that Lain Faulkner was in, in 1989,  
18 when you started working there.

19 A Yes. They were forensic bankruptcy  
20 accountants doing much the same kind of work as I did  
21 with Litzler & Associates.

22 Q What do you mean by the word forensic?

23 A To me as I understand it, forensic means  
24 applying the discipline of blank, in this case  
25 accounting, to matters of public discourse and law.

1 Q Public discourse and law, what do you mean by  
2 that phrase?

3 A As an example, you hear of Quincy, forensic  
4 pathologist. He was doing pathology as it related to a  
5 criminal investigation or a lawsuit. So he was  
6 doing --

7 Q You mean the television character?

8 A Yes, I do.

9 Q Okay. Someone who actually didn't exist?

10 A Correct.

11 MR. FORTE: All right. Go ahead.

12 Proceed.

13 MS. STREUSAND: You asked him the  
14 question, Mr. Forte.

15 THE WITNESS: I was finished.

16 MR. FORTE: You were -- okay. I'm sorry.

17 THE WITNESS: That's all right.

18 MR. FORTE: I thought I interrupted you.  
19 I apologize.

20 Q (BY MR. FORTE) Well, explain to me how you  
21 would apply forensic principles to this bankruptcy  
22 accounting work you were doing with Faulkner starting  
23 in 1989.

24 A As an example, they might ask which leases are  
25 profitable or not.

1 Q You mean oil and gas leases or any lease?

2 A Any kind of lease.

3 Q All right.

4 A Just this is a hypothetical.

5 Q Okay. Understood. Proceed.

6 A Which are profitable, which should be assumed  
7 or rejected. And I would work up accounting data to  
8 assist in that evaluation. That evaluation would lead  
9 to a legal proceeding, namely the assumption or  
10 rejection of a lease.

11 Q What would you do, typically, to value a  
12 lease?

13 A It depends on what kinds of leases.  
14 Basically, you'd look at the cash flow, the obligations  
15 assumed that follow along with it, whether or not it  
16 made business economic sense to assume or reject it.

17 Q Can you give me another example of how you  
18 applied forensic concepts to the bankruptcy accounting  
19 work you were doing at Lain Faulkner starting in 1989?

20 A Schedules and SOFAs require a listing of  
21 payments to insiders. So we might search through the  
22 records to extract that data.

23 MS. STREUSAND: For the record, what is a  
24 SOFA?

25 THE WITNESS: I'm sorry. Statement of

1 financial affairs, that's an acronym I mistakenly  
2 assumed everyone knew.

3 MS. STREUSAND: Thank you, Mr. Thomas.

4 Q (BY MR. FORTE) So -- so you would help to  
5 prepare statement of financial affairs and schedules  
6 for debtors?

7 A Yes.

8 Q In 1989, how much of the work that you were  
9 doing in the bankruptcy area for Lain Faulkner was  
10 representing debtors or trustees and how much was  
11 representing creditors?

12 A At that time, most of our work was still for  
13 Mr. Kellogg. And Mr. Kellogg would work for both  
14 debtors and usually the secured creditors. And so in  
15 my mind, I was working towards helping Mr. Kellogg.

16 And I didn't really focus nor remember  
17 whether it was for secured lenders or the debtor. It  
18 was a mixture of both.

19 Q At the time you started working for Lain  
20 Faulkner in 1989, were you an owner in Lain Faulkner?

21 A No.

22 Q Are you currently an owner in Lain Faulkner?

23 A I'm a shareholder.

24 Q It's a corporation?

25 A Correct.

1 Q When did you first become a shareholder?

2 A Seven or eight years ago.

3 Q You're still employed by Lain Faulkner,  
4 correct?

5 A Yes.

6 Q Have you been employed with Lain Faulkner  
7 since 1989?

8 A Yes.

9 Q Have you ever left Lain Faulkner for any  
10 reason and returned?

11 A Left the employment?

12 Q Yes, and returned.

13 A No. I've been employed the entire time, found  
14 a home.

15 Q That's good. Has the work that you've done  
16 for Lain Faulkner since 1989 changed since you started  
17 there?

18 A Still basically the same type work.

19 Q Forensic bankruptcy accounting?

20 A Primarily.

21 Q What else do you do there?

22 A We also do a small amount of business  
23 consulting or forensic accounting outside of  
24 bankruptcy, for example, just litigation support in  
25 state or federal court.

1 Q What kind of litigation support?

2 A Generally, trying to accumulate and  
3 investigate accounting issues at the direction of  
4 counsel.

5 Q Can you give me an example or two?

6 A I was not involved in this engagement. But as  
7 an example of non-bankruptcy work, our firm worked for  
8 the attorneys at Blank Rome in the TransCorp matter.  
9 And they did various projects and investigated and  
10 tried to answer lots of different questions posed to  
11 them by their counsel.

12 Q Who did you work with at Blank Rome?

13 A I didn't work on that engagement.

14 Q Okay. I didn't know that.

15 A I think it was -- do you have a Pittsburgh  
16 office?

17 Q No, Philadelphia --

18 A Well, then it --

19 Q -- is the main office.

20 A -- was someone in your Philadelphia office.

21 Q What year was that? Do you remember?

22 A It's still an ongoing case. However, it's  
23 been over the last two years.

24 MR. FORTE: Okay.

25 MS. STREUSAND: Speaks to your

1 qualifications.

2 Q (BY MR. FORTE) Now you mentioned previously  
3 that you're a certified public accountant in Texas; is  
4 that correct?

5 A Yes, sir.

6 Q Is that license active?

7 A Yes.

8 Q Has it been active since you earned it?

9 A Yes.

10 Q Have you ever been disciplined by the  
11 accounting authorities in Texas?

12 A No.

13 Q Do you have a CPA license in any other  
14 jurisdiction?

15 A No.

16 Q Now you mentioned that you're a certified  
17 fraud examiner; is that correct?

18 A Yes.

19 Q Who issues that certification?

20 A The Association of Certified Fraud Examiners,  
21 headquartered right here in Austin, Texas.

22 Q That certification is not issued by a  
23 governmental authority of any kind, is it?

24 A Correct.

25 Q For the record, it is not. Correct?

1 A It is not issued by a governmental authority.

2 Q Thank you. Have you told me all the licenses  
3 that you hold?

4 A Yes.

5 Q Do you hold any certifications? Well, let me  
6 back up. I would describe the certified fraud examiner  
7 as a certification. Is that fair?

8 A Yes.

9 Q And the CPA as a license.

10 A That's fair.

11 Q That's fair? All right. Other than that one  
12 certification and that one license, do you hold any  
13 other licenses or certifications?

14 A No.

15 Q And what do you have to do to maintain your  
16 certified fraud examiner certification?

17 A The continuing professional education  
18 requirements that I've already explained.

19 Q Right. Anything else?

20 A And pay your money each year. Now I also  
21 assume that if I were to ever get into any kind of  
22 trouble or commit misdeeds, that they could kick you  
23 out. But that's never been a concern of mine.  
24 Basically, I do my CPE and pay my money.

25 Q And I assume you have no formal legal



1 education.

2 A Formal legal, no, sir.

3 Q All right. You've never practiced law or held  
4 a law license, correct?

5 A Correct.

6 Q Have you ever held a teaching position?

7 MS. STREUSAND: Teach.

8 Q (BY MR. FORTE) Teaching.

9 A I teach in training meetings, at seminars, but  
10 I don't have a teaching license to be employed as a  
11 teacher. I've certainly taught people things.

12 Q These training seminars are -- who sponsors  
13 those?

14 A Lain Faulkner is a provider of accredited CPE  
15 in Texas. I have given CPE courses where not only Lain  
16 Faulkner people attend, but also outside CPAs and  
17 attorneys.

18 For example, last week in Dallas I gave a  
19 speech, along with an attorney -- it was a co-speech --  
20 on defending preferences at the Dallas chapter of the  
21 -- excuse me -- the bankruptcy section of the Dallas  
22 Bar Association.

23 CPAs that attended that were able to get  
24 CPE credit. So in that regard, I might have taught.

25 Q Did you create any materials for your

1 defending preferences presentation in Dallas?

2 A Yes.

3 Q Were they published in any kind of form, in a  
4 booklet or pamphlet or anything of that nature?

5 A Trying to understand published. They have  
6 not --

7 Q Well, I'm sorry.

8 MS. STREUSAND: It's a just a handout,  
9 correct?

10 THE WITNESS: Yeah.

11 A I -- I made copies of them and gave it out.

12 MR. FORTE: Right. I -- I didn't mean to  
13 use the word in a legal sense that --

14 THE WITNESS: Okay.

15 MR. FORTE: -- something's published and  
16 circulated by a publisher.

17 THE WITNESS: No.

18 Q (BY MR. FORTE) Okay. You created materials  
19 that were gathered and put in some sort of a collected  
20 form and distributed to people who participated in the  
21 seminar?

22 A That is correct.

23 Q All right. Did those materials reflect  
24 your -- back up.

25 Did anything in those materials reflect

1 or relate to the opinion you're giving in this case?

2 A No.

3 Q Did you use any of the principles in those  
4 materials in rendering your opinion in this case?

5 MS. STREUSAND: Objection to the form of  
6 the question.

7 A I used some of the same tools. One of the --  
8 part of the handout was our XY graph, which is part of  
9 my expert report in this case.

10 Q (BY MR. FORTE) What do you mean by an XY  
11 graph?

12 A It's --

13 MR. FORTE: Well, I -- I want him to  
14 describe it to me from his memory.

15 A Okay. An XY graph is a common term for a  
16 presentation of data. There are two axes. The  
17 horizontal axis is time. The vertical axis in my graph  
18 is the days to payment, defined as the difference  
19 between the date of an invoice and the date it was  
20 paid.

21 The payment of an invoice is represented  
22 by a diamond. Thus it gives a visual representation of  
23 the payment history over some period of time. It's one  
24 of many tools we use in preference analysis. And it  
25 was included in my handout as one of many tools.

1 Q (BY MR. FORTE) What other tools are described  
2 in that handout?

3 A Statistics, a statistical summary.

4 Q What do you mean by a statistical summary?

5 A That's the name of a chart that is one of the  
6 schedules that come out of our computer system. The  
7 most common and most well-understood statistic is the  
8 days to payment.

9 It calculates the average days to  
10 payment, the median days to payment, the minimum and  
11 maximum days to payment and the standard deviation, as  
12 is laid out in this box on my XY chart under tab eight.

13 Q Okay. And you're referring to tab eight  
14 meaning Exhibit 8 to your expert report in the case?

15 A That is correct.

16 Q What some people refer to as scattergrams?

17 A Some people might.

18 Q All right. The statistical summary you just  
19 described, did you use one of those in the report in  
20 this case?

21 A No.

22 Q Why not?

23 A I didn't need it to make my point or support  
24 my opinion.

25 Q Well, what was it about the statistical

1 summary that you didn't need?

2 A The statistical summary performs those  
3 calculations I just described for a number of data  
4 points: days to payment, dollar amount of payment,  
5 days between payment, number of invoices per payment,  
6 and the invoice size.

7 Most of those, other than -- well, none  
8 of those, other than days to payment, I felt that I  
9 needed to support my opinion. Thus I didn't include it  
10 in my report.

11 MR. FORTE: I'd like to get a copy of the  
12 materials that Mr. Thomas used at his Dallas seminar.

13 MS. STREUSAND: We'll take it under  
14 advisement and get back to you on that.

15 Q (BY MR. FORTE) Do you have materials with  
16 respect to defending preference actions that you  
17 regularly use in teaching classes or giving  
18 presentations or seminars?

19 A No.

20 Q Well, when did you create the materials that  
21 you used at the Dallas seminar you recently described?

22 A I pulled together that handout a day or two  
23 before.

24 Q Did you use a prior graph of similar materials  
25 to build that?

1           A       Some of the materials previously existed, such  
2 as an example XY chart and how to read it. Others were  
3 created right before the seminar.

4                   MS. STREUSAND: You prepare like the rest  
5 of us.

6           Q       (BY MR. FORTE) How long have you been using an  
7 XY graph in your analysis of preferences?

8           A       I believe my very first XY graph used in a  
9 preference analysis may have been nine or 10 years ago.

10          Q       What software is used for that?

11          A       At that time, it was an Excel spreadsheet.

12          Q       Is it still an Excel spreadsheet?

13          A       No.

14          Q       What is it now?

15          A       Our software system is a Sequel server  
16 database back-end with an Access front end or user  
17 interface grafted together.

18                   Additionally, there's some custom  
19 programming, one of which is taking what started out  
20 life as an Excel XY graph, tweaking it to fit into that  
21 system. Thus it generated the charts you see.

22          Q       Well, I'm not sure I understood all that. But  
23 you -- you took the Excel XY graph and modified it?

24          A       Uh-huh.

25          Q       You have to say "yes" or "no" so he can get it

1 down.

2 A I'm sorry. Yes.

3 Q Thank you. And how precisely did you modify  
4 the Excel spreadsheet?

5 A I didn't do the modification, so I wouldn't be  
6 able to tell you. We hired a programmer to do that.

7 Q Well, did you give instructions to the  
8 programmer as to what you wanted?

9 A Yes.

10 Q What instructions were those?

11 A Make it look like the graph in my expert  
12 report as opposed to the graph that comes out of the  
13 stock Excel schedule.

14 Q How does it differ?

15 A The Excel -- other than the basic concept of  
16 the two axes and plotting data points, the Excel  
17 schedule doesn't have any of the titles and it doesn't  
18 look like that. So we made it look the way we wanted.

19 We chose to put certain report  
20 restrictions and certain statistical data up there and  
21 the titles so that it would be a little more  
22 user-friendly and easier to read, we hoped more useful.

23 Q Can -- can you give me a precise example of  
24 what was added to the Excel form?

25 A Other than saying everything on that tab,

1 because I don't think anything on that tab is what  
2 comes out of a stock Excel XY graph, although I will  
3 admit it's been years since I've looked at a stock  
4 Excel tab. But it's pretty barren.

5 MS. STREUSAND: So years? How many years  
6 ago was it, for the record, Mr. Thomas?

7 THE WITNESS: Since I last looked at a --  
8 just a stock Excel XY graph, oh, at least four, five,  
9 six.

10 Q (BY MR. FORTE) All right. Now you're looking  
11 at the document that's marked as tab eight to your  
12 expert report; is that correct?

13 A Yes, sir.

14 Q Okay. And that's two pages of these charts  
15 you've described, correct?

16 A Yes.

17 Q Well, let's look at the first page, which says  
18 Ordinary Course Preference Analysis 2 Year Historical  
19 Period 45-Day Ordinary Course Range.

20 Now can you point to items on that page  
21 that you believe were added by your modification to the  
22 XY graph Excel format?

23 A Yes.

24 Q Okay. Tell me.

25 A The only things that weren't added from a



1 stock Excel graph would be whatever description would  
2 come out on the X and Y axis. That's all that comes  
3 out on a stock Excel graph.

4 So everything else was added by us. The  
5 report restrictions box in the upper right-hand corner  
6 was added. The days to payment statistical summary was  
7 added.

8 All of the description in the left-hand,  
9 upper corner, InaCom ordinary preference analysis  
10 two-year historical, 45-day ordinary course range, all  
11 of those descriptive phrases were added. The text  
12 boxes were added.

13 Q The text box at the bottom left, was that  
14 added?

15 A Yes, sir.

16 Q All right.

17 A Also the text box in the upper left.

18 Q Now you said you hired a programmer to  
19 actually make these modifications to the Excel format?

20 A Yes.

21 Q All right. That wasn't you, correct?

22 A Yes.

23 Q We'll be looking at your report later today.  
24 Have you written any articles or published any  
25 writings?

1 A Again, what do you mean by the word published?

2 Q Well, that's why I said have you written any  
3 articles or published any writings because I understand  
4 sometimes articles can be written and distributed  
5 without officially being published.

6 A Okay.

7 Q So I'm trying to find out if you've written  
8 anything and, if you have, has anything been published.  
9 So anything written, published or not, or anything  
10 written and published?

11 A I have written things like I wrote the cover  
12 sheet on the handout that I gave at the Dallas Bar  
13 meeting. In my mind, none of that's been published.

14 In my Rule 26 disclosure, I answer the  
15 question regarding prior publications as none.

16 Q Well, I assume that you have no prior  
17 publications.

18 A That is correct. That's why I offer --  
19 answered it as none.

20 Q All right. Do you have any examples of  
21 writings that you've created that perhaps weren't  
22 published but were otherwise distributed to people for  
23 various reasons, such as the seminar you described  
24 earlier today?

25 A Yes.

1 Q All right. Do you keep them in a place where  
2 they can be recovered?

3 A I've kept some of them, others not.

4 Q Do any of them address preferences?

5 A Yes.

6 MR. FORTE: I'd like to get copies of  
7 those, please, the ones that address preferences.

8 MS. STREUSAND: We'll take it under  
9 advisement and get back to you.

10 Q (BY MR. FORTE) Now in the course of your  
11 professional work, do you have occasion, Mr. Thomas, to  
12 read publications relevant to your professional work?

13 A Yes.

14 Q Are there any publications that you read or  
15 review on a regular basis?

16 A Yes.

17 Q Which ones are those?

18 A I subscribe to a bankruptcy law update service  
19 that comes over the Internet. I don't recall the name.  
20 My partners and I are members in many different  
21 professional associations such as the American  
22 Bankruptcy Institute, CIRA.

23 All of these organizations regularly  
24 publish updates or papers and we circulate them amongst  
25 the professionals in our office. We subscribe to the

1 Bankruptcy Litigation Support, I think's the name of  
2 it. All of the -- there's a lot of these materials  
3 that flow across my desk and I review them.

4 Q Well, could you name three that you review  
5 regularly that you look to as authoritative sources?

6 A Three I review regularly are the American  
7 Bankruptcy Institute -- I don't know what they call it.  
8 It's the monthly report.

9 Q What else?

10 A Bankruptcydata.com sends out a bankruptcy  
11 newsletter. And then we pay to subscribe to -- and I  
12 don't recall -- it's the bankruptcy litigation report  
13 or something, reports on bankruptcy case law and  
14 current developments. And I regularly review that.

15 Q When you review bankruptcy materials,  
16 particularly those relating to current case law, is  
17 there any particular area of bankruptcy law that you  
18 focus on?

19 A Yes.

20 Q What's that?

21 A Avoidance actions and claims. I pass the  
22 claims information on to my partner in charge of our  
23 claims department and I use the avoidance action --

24 Q What do --

25 A -- information.

1 Q -- you mean by avoidance actions?

2 A Primarily avoidance actions under the  
3 Bankruptcy Code, Sections 547, 548 and 549.

4 Q So that would be preferences, fraudulent  
5 transfers and postpetition transfers?

6 A Yes.

7 THE WITNESS: May I refill my water while  
8 you're --

9 MR. FORTE: Absolutely. I meant to say  
10 if you need a break for any reason, Mr. Thomas, just  
11 say so.

12 MS. STREUSAND: And actually, give me a  
13 minute and I'll be --

14 MR. FORTE: You need a break?

15 MS. STREUSAND: Yeah. I need a break.

16 (Recess from 10:26 a.m. to 10:32 a.m.)

17 MR. FORTE: I would like to mark as  
18 Thomas 1 the Lain Faulkner engagement letter of May  
19 30th, 2002 with Hughes & Luce.

20 I want to apologize I don't have more  
21 than one extra copy of it. I discovered last night in  
22 my hotel I didn't bring enough of them but we have one  
23 you can look...

24 (Exhibit No. 1 marked)

25 Q (BY MR. FORTE) Mr. Thomas, I've handed you

1 engage our firm in that capacity, a decision will be  
2 made in light of the nature of the information  
3 previously disclosed to us, end quote.

4 Can you help me to understand what you  
5 meant by that sentence?

6 A That if you wish to engage us as a testifying  
7 expert, you know that anything we've done is  
8 discoverable.

9 Q Now going down to the next paragraph, you  
10 state: In general terms, we will assist you by  
11 performing forensic accounting research.

12 Can you explain to me how the forensic  
13 principles you've talked about earlier today were  
14 actually applied in this preference analysis?

15 A Yes.

16 Q Please do.

17 A The way we applied forensic accounting is we  
18 took the data. We performed various analyses. We  
19 looked at the data and we tried to then use what we saw  
20 and did to apply towards a preference defense.

21 Q And is the data set forth in tab four to your  
22 report, the two-year payment history?

23 MR. FORTE: I'm sorry. I haven't marked  
24 it yet.

25 MS. STREUSAND: Let me hand the witness

1 the documents so he can refer to them.

2 MR. FORTE: Thank you.

3 A Tab four is the history of payments made prior  
4 to the preference period. And it covers the range  
5 February 1, 1998 through March 17th, 2000.

6 Q (BY MR. FORTE) Okay. Well, with respect to  
7 the pre-preference period, is that the data that you  
8 referred to in answer to your last question?

9 A Yes.

10 Q All right. Now the fourth paragraph of Thomas  
11 1, it refers to all work papers or other documents used  
12 by us during the course of this engagement will be  
13 maintained in segregated files, end quote.

14 What documents were maintained by you and  
15 where were they segregated physically?

16 A In files, various kinds of files depending on  
17 what the actual tangible object was.

18 Q All right.

19 A In file cabinets near my office.

20 Q Now you just indicated, by pointing to your  
21 left, towards documents on the side board of the  
22 conference room that counsel produced earlier today.  
23 Are those the files that are referred to in the letter?

24 A Yes.

25 Q Okay. Those are all your work papers?

1 A Yes.

2 Q Could you give me a general description of  
3 what they are.

4 A They are source business documents such as  
5 invoices, bank statements, canceled checks.

6 Q Uh-huh.

7 A That's all the tangible documents we received.  
8 We received electronically -- thus they're not in a  
9 physical file but they're printed out as tab four --  
10 the payment history.

11 We also received a similar electronic  
12 history of the payments made during the preference  
13 period, which is included under tab five of my expert  
14 report.

15 Q And the documents to your left along the side  
16 board, do those contain bank statements provided to you  
17 by my firm?

18 A Yes. May I add to my answer?

19 Q Yes.

20 A Additionally over on the side bar board, there  
21 is one file which are calculations that we prepared at  
22 the request of Sabrina which was to be furnished to  
23 John LaRocca to help him prepare his expert report.

24 Q What information did you send to Mr. LaRocca?

25 A It's the information in that file.



1 since approximately May of 2002; is that correct?

2 A I -- I would think that is true.

3 Q All right. But you can't say, as you sit here  
4 today, how much more?

5 A That is correct.

6 Q Okay. Even though you send all the bills out?

7 A That is correct.

8 Q You read all the bills before you send them  
9 out, right?

10 A Yeah.

11 Q And you still can't say?

12 A Still can't say.

13 Q Will the fees that Lain Faulkner earns on this  
14 matter be in any way affected by the result of this  
15 litigation?

16 A No.

17 Q You get your hourly rates plus expenses  
18 regardless of the results, win, lose or draw?

19 A Correct.

20 MR. FORTE: Okay. Why don't we mark as  
21 Thomas 2 your April 28th, 2005 report with the 11  
22 exhibits.

23 MS. STREUSAND: Did you bring a copy?

24 MR. FORTE: Yeah.

25 THE WITNESS: Is this a good place for a

1 break --

2 MS. STREUSAND: Sure.

3 MR. FORTE: Yeah. Do you --

4 THE WITNESS: -- before we get into...

5 MR. FORTE: -- want to take a break?

6 Sure, go ahead.

7 (Exhibit No. 2 marked)

8 (Recess from 11:21 a.m. to 11:30 a.m.)

9 MR. FORTE: Mr. Thomas, I'd like to hand  
10 you a thick black binder which we will call Thomas 2.  
11 And it contains transmittal letter from Ms. Streusand  
12 to me dated April 29th of this year followed by a copy  
13 of your report and 11 tabs of information.

14 I'll hand that to the witness.

15 Q (BY MR. FORTE) Now Mr. Thomas, with the  
16 obvious exception of the transmittal letter to me from  
17 Ms. Streusand that's at the top of this document, does  
18 Thomas 2 constitute your report and supporting  
19 information in this case?

20 As far as I know, the copies came out  
21 correct. I haven't --

22 A I'm taking a quick look. And it appears to be  
23 my report.

24 Q Good. Now let's focus first on what I'll call  
25 your opinion letter, which is the top document dated